

By: Corporate Director – Enterprise and Environment
To: Kent Flood Risk Management Committee
Subject: Sustainable Drainage Systems
Classification: Unrestricted

Summary:

The government has recently consulted on the National Standards for sustainable drainage systems and procedures for KCC to perform its new role of Approval Body. This paper presents a summary of the National Standards and the key points of Kent County Council's response.

1. Introduction

- 1.1 The UK Government passed the Flood and Water Management Act 2010 (the Act) in April 2010 to provide new legislation for the management of flood and coastal erosion risk in England and Wales. Schedule 3 of the Act requires construction work with drainage implications to have its drainage systems approved before construction may begin and promotes the utilisation of sustainable drainage systems (SuDS) to manage drainage.
- 1.2 The “approving body” (“SAB”) for this approval process has been designated to county councils and unitary authorities. The SAB must also adopt and maintain those drainage systems that are approved SuDS which serve more than one property.
- 1.3 Sustainable drainage is a means of managing surface water at source with the aim of preventing or reducing flooding and improving water quality. Elements of sustainable drainage may include soakaways, swales, permeable pavement, attenuation basins, wetlands and ponds.
- 1.4 The Act requires that National Standards are published by the government that set out what is expected from a drainage system to be approved by the SAB. Defra published the National Standards for public consultation on 20 December 2011, which closed on 13 March 2012.

2 The National Standards

- 2.1 The National Standards provide required standards for the performance, design, construction, operation and maintenance of SuDS in order to be approved. They encourage the use of sustainable techniques and only if these are not feasible may conventional techniques be used.
- 2.2 The National Standards have a hierarchy of discharge locations, in order of preference:

- groundwater,
 - surface water body,
 - surface water sewer,
 - combined sewer.
- 2.3 Only if it can be demonstrated that the most preferable receiving body cannot feasibly receive the water can the next be considered (for instance due to impermeable ground or no local watercourses). Connection to a sewer, for the discharge of surface water, is no longer a right. It will be up to the SAB to determine if the applicant has demonstrated that that is the most sustainable way to discharge the water.
- 2.4 Drainage approval must be sought for any construction that has drainage implications. However, Defra is seeking to implement the legislation in a phased manner, with a preference to commence with major planning applications with minor planning applications being added later. It is likely that approval will never be required for construction areas less than 100 m².
- 2.5 The proposed drainage scheme will also have to meet maximum discharge rates and volumes and provide treatment of the water, which will vary according to the source and the body it is discharged to.
- 2.6 The consultation also includes four draft statutory instruments which provide the legal framework for the approval and adoption processes which include:
- Approval and adoption;
 - Enforcement of the requirement for SAB approval;
 - Procedural matters relating to approval and adoption; and
 - Appeals against SAB decisions.

3 Kent County Council's role as SAB

- 3.1 As an approving body KCC will receive applications for drainage approval, from Local Planning Authorities submitted jointly with a planning application or directly from the developer.
- 3.2 KCC will be required to make a decision on an application within 7 weeks for minor applications and 12 weeks for major applications.
- 3.3 Within this review period, KCC is required to consult with a number of statutory consultees, including Environment Agency, Southern Water, Internal Drainage Boards and the highway authority. The statutory consultees are required to provide a response to the SAB within 21 days.
- 3.4 KCC must assess each drainage application against the National Standards. If the application is consistent with the National Standards, it must be approved.
- 3.5 The SAB role is a technical approval role similar to that which KCC currently fulfil with respect to the adoption of highways. Decisions made by KCC will

not be required to be submitted to committee or be reviewed by Cabinet members.

- 3.6 KCC must adopt a sustainable drainage system which is constructed according to the approval. Once adopted, the asset must be listed on a register and becomes KCC's responsibility for maintenance.

4 Resource implications of new responsibilities

- 4.1 If this new responsibility is introduced with the threshold that all major planning applications requiring approval KCC will receive approximately 500 applications per year.
- 4.2 The new responsibilities may be undertaken within KCC's current structure and capabilities; however, they will place additional demands on existing staff. Additional capacity is anticipated to be required.
- 4.3 Areas that will be affected include:
- 4.3.1 Pre-planning: Staff will be required to undertake pre-planning consultation meetings to advise developers on preferred approaches and drainage considerations and manage the administrative requirements of statutory consultation.
- 4.3.2 Approval and Adoption: Staff will be required to determine if the submitted drainage strategies meet the National Standards, advise on approval or refusal following technical review, undertake inspections of systems requested for adoption and inform maintenance teams of anticipated maintenance program requirements.
- 4.3.3 Maintenance: As SuDS systems are constructed, they will be added to the County's asset management system, with additional requirements for regular maintenance. This will increase the responsibilities of the existing Highways Maintenance team.
- 4.3.4 The consultation includes proposed application fees for the first three years of this process, these start at £350 and rise to a maximum of £7,500. After the initial three years KCC will be required to publish a schedule of fees based upon cost recovery for the work involved. KCC is permitted to charge fees for inspection based on an hourly rate for services.
- 4.3.5 The consultation does not at present include details on how the costs of maintenance will be covered for the adoption of SuDS. Defra is proposing to fund this itself for the first three years, but they have not provided details on how the sums will be calculated or paid.

5 Legal implications of new responsibilities

- 5.1 KCC will have new legal powers and responsibilities to act as the approving body. These include:
- 5.1.1 Should an application be refused the applicant has the right to appeal the decision. The secondary legislation proposes procedures in line with the Town and Country Planning Act, which require written representations and attendance at any necessary inquiry.
 - 5.1.2 An approving body has a power to give a stop notice for any specific activity and enforcement notice for any breach of approval or conditions. Such enforcements may also be appealed and therefore representations at subsequent hearings may be required. The approving body may also undertake further action if a person fails to comply with a notice by enforcing a fine or subsequent conviction.
 - 5.1.3 An approving body has powers of entry to any construction area to determine if it should be subject to a drainage approval or to determine if stop notice or enforcement notice has been complied with.
 - 5.1.4 Once KCC has adopted a SuDS we will have a duty to maintain it..

6 Kent County Council response to the draft National Standards and legislation

- 6.1 A full response to the 29 questions posed by the consultation was prepared as well as response to specific issues with the National Standards, the proposed Statutory Instruments and the Impact Assessment.
- 6.2 KCC recommends implementation of Schedule 3 and the National Standards on 1 April 2013, to provide sufficient time to develop internal processes and procedures and recruit and train staff.
- 6.3 The following key points summarise Kent County Council's response:
- 6.3.1 Financial implications
 - The estimated number of applications does not reflect the likely number a county council the size of Kent will receive and therefore underestimates the number of staff we will require to perform the role of the SAB.
 - The estimated cost of maintaining adopted SuDS does not reflect the variation of SuDS techniques that may be used or the sizes of the developments they will serve.
 - 6.3.2 Inconsistency with existing guidance
 - The technical performance requirements do not correctly reflect current SuDS guidance and best practice.
 - The standards may result in conflicts with Building Regulation and new Mandatory Standards for Foul Sewers.
 - 6.3.3 Ambiguous procedures for two-tier authorities

- The process for making an application for drainage approval at the same time as a planning application to different authorities raises potential conflicts over the fee payment, validation of the application and timeframe for a decision should either of these be unsatisfactory.

6.3.4 Affordability goal

- The technical requirements of the guidance for a SuDS requires drainage systems that have much higher performance criteria than conventional systems, which means there is a conflict with the requirement for SuDS to be affordable in comparison with an “*equivalent* conventional design” as an equivalent system would be a SuDS.

6.3.5 Lack of consideration of matters following adoption

- Standards and secondary legislation do not cover operational issues that the SAB will have to undertake to ensure the performance of SuDS is maintained.

6.3.6 Conflicts with existing legislation

- There is a lack of uniformity with other Acts, particularly the Highways Act and the Water Industry Act, notably in the provision of powers the SAB will be able to rely upon in undertaking similar activities to those of a sewerage undertaker or highway authority.
- There is a lack of consistency and uniformity as to definitions, notably the definitions of adoptable system, sewer, highway sewer etc, between the National Standards and the Flood and Water Management Act, the Highways Act and the Water Industry Act.
- The proposed secondary legislation does not provide any clarification of potential conflicts between the Floods and Water Management Act and planning legislation, notably consideration of drainage within planning applications and flood risk assessments.

7. Recommendations

7.1 the Committee is recommended to note this report.

References

Draft National Standards and statutory instruments are available online at: <http://www.defra.gov.uk/consult/2011/12/20/sustainable-drainage-systems-1112/>

Flood and Water Management Act 2010 is available online at: <http://www.legislation.gov.uk/ukpga/2010/29/contents>

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